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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BRUCE CAMPBELL,

Defendant and Appellant.

B211247

(Los Angeles County
Super. Ct. No. SA066544)

APPEAL from a judgment of the Superior Court of Los Angeles County.

Katherine Mader, Judge. Judgment affirmed.

Rita L. Swenor, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Sara J. Farhat, Deputy Attorney General, and Kathy S. Pomerantz, Deputy Attorney General, for Plaintiff and Respondent.

Appellant Bruce Campbell (“Campbell”) appeals his conviction for one count of first degree residential burglary (Pen. Code,¹ § 459). He contends that the trial court’s admission of evidence relating to an eyewitness’s pretrial and trial identifications denied him due process of law because the pretrial photographic lineup was unduly suggestive and impermissibly tainted the subsequent in-court identification. Campbell also argues that his counsel rendered ineffective assistance at trial by insufficiently challenging the eyewitness identification evidence. We affirm the conviction.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On January 8, 2008, Henry Huang (“Huang”) was residing in a two-story house in Santa Monica. There was an alleyway directly behind his property, and across from the alley was an apartment building. Shortly after 11:00 a.m., Huang arrived home. Upon entering his house, Huang noticed that various doors and drawers were open, and that the drawers had been turned upside down. He also observed that the sliding glass door to the backyard was completely open. Huang saw a person standing near the back gate of his property, and he ran toward the man as he shouted, “Call the police.” The man turned and jumped over the gate. Huang immediately opened the gate and observed a brown two-door car in the alley and a person sitting in the front passenger seat. Huang ran to the rear of the car and memorized the license plate number. Someone shouted, “Go, go, go,” and the car drove off.

Huang went back to the house, wrote down the license plate number, and called 911. As he waited for the police to arrive, Huang observed that the padlock on the back door had been completely pulled off. He also found a crowbar, which did not belong to him, on his bed. Several of Huang’s personal possessions, including a guitar and laptop computer, had been moved from their original place in his house. Some of his belongings were found near the back gate of the property where the suspect had been

¹ Unless otherwise stated, all further statutory references are to the Penal Code.

standing. Huang never saw the face of the man standing by the back gate, but described him as a tall, medium-skinned Black man with small muscles like a 500-meter runner.

Joanne Carr (“Carr”) resided in a second-floor apartment across from Huang’s house. The alleyway ran between her apartment building and the back of Huang’s property. At approximately 11:00 a.m. on January 8, 2008, Carr’s attention was drawn to the alley by loud music. Upon looking outside her apartment window, Carr observed a brown, older model American car parked near the back of Huang’s property. The driver’s side door was open. Carr was able to see the license plate of the vehicle from her vantage point and wrote down the license plate number on a piece of paper.² Carr then saw a man walk from the front of the car to the rear and stand by the rear of car for two to four minutes, staring in the direction of Huang’s house. Carr observed the front of the man’s face for one to two seconds, but she “got a good look” at the side of his face as he stood by the car for several minutes. At trial, Carr made an in-court identification of Campbell as the man she saw standing by the car.

As Carr was watching the man by the car, she heard someone yell “hurry, hurry, hurry,” and then saw another man come over the fence. Both men got into the car and drove away. Carr thought that another person may have been sitting in the back of the car, but she was not certain. Later that day, Carr spoke to the police and provided them with a physical description of the two men. She described the man standing by the car as a light-skinned Black man with “somewhat curlier hair,” wearing a white shirt and khaki pants. She described the other man as tall, muscular, and bald.

During the police investigation, the fingerprints of Germelle Williams (“Williams”) were found on a mug in Huang’s house. On January 10, 2008, Officer Raul Flores received information from the detectives investigating the burglary that Williams and the vehicle involved were possibly at a residential address in Hawthorne, California.

² Carr wrote down the license plate number “1ANT752,” whereas Huang wrote down the license plate number “1ANT572.” The correct license plate number for the vehicle was the one provided by Huang.

When Officer Flores and his partner, Investigator Gamache, responded to the address, they observed a brown two-door Oldsmobile with the license plate number “1ANT572” parked in front of the residence. Investigator Gamache observed Williams and Campbell come out of an apartment, enter the Oldsmobile, and leave the area, with Campbell driving and Williams in the passenger seat. Other officers initiated a traffic stop of the Oldsmobile on the 110 Freeway. While being detained by the police, Campbell told Officer Flores that the Oldsmobile belonged to his deceased mother and that he had taken possession of the car. Both Campbell and Williams were arrested on January 10, 2008.

On January 11, 2008, three days after the burglary, Detective Chad Goodwin met with Carr at her home to show her a six-pack photographic lineup. After obtaining Campbell’s January 10 booking photograph from a county law enforcement computer database, Detective Goodwin used a software program to select five photographs of other persons who were of similar race, height, weight, and age as Campbell. The program returned a page of approximately 20 booking photographs, and Detective Goodwin randomly selected the other five photographs based on the description that Carr provided to the police. In his photograph, Campbell was wearing jail-issued clothing. At trial, Detective Goodwin testified that he was not aware that Campbell was dressed in jail clothes because it appeared to him that Campbell simply may have been wearing a blue shirt. Detective Goodman also testified that he did not believe the lighting in Campbell’s photograph was brighter than the others, and that he did not consider photographic lighting in preparing the six-pack.

When Detective Goodwin met with Carr on January 11, 2008, he told her that the police had two suspects in custody, but did not provide any other details about the investigation. Prior to showing Carr the six-pack, Detective Goodwin read a preprinted admonition to her, and Carr indicated that she understood the admonition.³ Detective

³ The witness admonition stated as follows: “I’m going to show you a group of photographs. The fact the photographs are shown to you should not influence your judgment. You should neither conclude nor guess that the photographs contain a picture of the person who committed the crime. You don’t have to identify anyone. It’s just as

Goodwin also told Carr that the photographs “may or may not” be of the person that she saw. After viewing the six-pack for two to three seconds, Carr selected Campbell’s photograph and told Detective Goodwin, “I’m pretty sure this is him.” Carr considered Campbell’s skin tone, hair, and likeness to the man she saw by the car in making her photographic identification. Carr also asked Detective Goodwin if he had a side view picture because she had a better view of the suspect’s side. According to Carr, she was an artist who sculpted dolls and she “like[d] to look at people’s faces.” During her observation, she had studied the side of the man’s face, and had noticed that the bridge of his nose was very narrow and he appeared to be of Ethiopian or Egyptian descent. Because no side view photographs were available at the time she was shown the six-pack, Carr tried to imagine what Campbell’s face would look like from the side in making her identification.

On June 3, 2008, Frank Salerno (“Salerno”), a defense investigator, interviewed Carr. He took handwritten notes as they talked, but did not tape record the interview. According to Salerno, Carr stated that when Detective Goodwin met with her, he told her that he wanted her “to look at some photographs and pick out the person [she] saw.” Detective Goodwin then gave Carr an admonition, and prior to showing her the six-pack, he told her that it was “okay if she could not identify anyone.” Carr reported to Salerno that she reviewed the photographs for five to six minutes, and when she identified Campbell, she told Detective Goodwin that “[t]his looks like the guy.” Carr could not recall if she immediately pointed to Campbell’s photograph, but indicated that she could have and that she had asked for a side view picture. Carr noted that she only saw the front of the suspect for a few seconds, but observed his side for one or two minutes. Carr also explained to Salerno that, in selecting Campbell’s photograph, she relied on his

important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that their hairstyles, beards and mustaches are easily changed. Photographs do not always depict the true complexion of the subject. For example, they may be lighter or darker. Please do not discuss the case with other witnesses or indicate in any way to other witnesses whether you have identified someone.”

coloring, his short curly hair, the structure of his nose, his slight build compared to the others, and the fact that he looked Ethiopian to her. According to Salerno, Carr stated that she was 75 to 80 percent sure of her photographic identification and that she would have been 100 percent sure if she had seen a side view.

At trial, Carr was asked to observe the side of Campbell's face. She confirmed in court that he was the person that she saw standing by the car. On cross-examination, Carr stated that she was 90 percent sure of her photographic identification, and explained that she had asked the police for a side view photograph to confirm that her identification of Campbell was correct. On redirect, Carr reiterated that based on her in-court observation of Campbell, including the side of his face, she was sure that Campbell was the person she saw by the car.

Jessica Macias was Campbell's girlfriend.⁴ She and Campbell had been in a relationship for eight years and they had three children together. They resided in a house behind an apartment building where Jessica's mother, Silvia, lived. At trial, Jessica testified that prior to Campbell's arrest on January 10, 2008, Campbell had been driving his deceased mother's 1979 Oldsmobile. Jessica last saw the Oldsmobile on January 5, 2008. On that day, they attended a birthday party for Campbell at the home of his aunt, and Jessica observed the Oldsmobile parked in front of the aunt's residence. Jessica also testified that she picked up Campbell from his aunt's house on January 6, 2008, and that Campbell borrowed her mother's car to take their children to school on January 7 and 8, 2008.

Jessica's mother, Silvia, testified that Campbell's 1979 Oldsmobile usually was parked across the street from her apartment building. According to Silvia, she last saw the Oldsmobile on January 5, 2008, the same day as Campbell's birthday. On January 7 and 8, 2008, Campbell borrowed Silvia's car to take his children to school. Silvia also

⁴ Both Jessica Macias and her mother, Silvia Macias, testified at trial on behalf of Campbell. For clarity and convenience, and not out of disrespect, we shall refer to Jessica and Silvia Macias by their first names.

testified that the January 5, 2008 birthday party for Campbell was held at his home, and that Campbell's mother had attended the party. On redirect, Silvia clarified that she was aware that Campbell's mother was deceased and that she probably saw Campbell's aunt or another relative at the party rather than his mother.

Mitchell Eisen ("Dr. Eisen"), PhD, testified as an expert witness on memory for the defense. Dr. Eisen explained that human memory does not function like a camera because humans are limited in how much information they can acquire and retain at any given time. According to Dr. Eisen, there are four elements of memory: (1) attention, (2) acquisition and encoding, (3) storage and organization, and (4) retrieval. With respect to storage and organization, Dr. Eisen testified that individuals watching the same event likely would agree on the general defining features of the event, but would differ on the smaller details based on what they focused on, how they saw the event, and how the event fits into their lives. With respect to retrieval, Dr. Eisen testified that while humans generally remember the major details of important events, they do not recall every detail, and thus, they use inference to fill in the gaps. Dr. Eisen described retrieval as an active process in which people actively access their memory of an event and then alter it slightly each time as they recall the details. During this process, mistakes may or may not be made in the manner in which the information is retrieved.

Dr. Eisen also testified about eyewitness identifications. He explained that studies regarding the accuracy of eyewitness identifications consistently have shown that it is more difficult for a witness to make a cross-race identification than a same race identification. Cross-race identifications accordingly have a lower rate of accuracy. Dr. Eisen further testified that numerous studies have been conducted on how to best construct a six-pack photographic lineup. Based on the Department of Justice guidelines, the overriding principle in assembling a six-pack is that no single photograph should "unduly stick out" from the others because it may bias the selection process. Instead, the task should be to ensure that the persons in the photographs are "roughly equivalent in most every way," so that a witness's identification will be based on his or her recognition of the suspect, not on any external cue in the photographs. Dr. Eisen also stated that the

persons in the other photographs should match the basic description of the suspect as provided by the witness. According to Dr. Eisen, the only obligation one has in constructing a six-pack is to ensure that the other photographs match the description to the extent that the suspect does and that no single photograph “stick[s] out as being the only possible choice.”

Dr. Eisen described the process by which a witness may make a lineup decision. He explained that at times eyewitnesses will immediately recognize and identify the suspect. However, if the suspect is not immediately detected, it is very common for witnesses to undertake a comparative process whereby they compare the photographs against one another, and narrow down their selection to the person who best matches their memory of the suspect relative to the other five individuals. Dr. Eisen also testified about the concept of “unconscious transference” whereby an eyewitness unconsciously confuses a similar face associated with an event with the face of the suspect. Once an eyewitness has identified a person as the perpetrator, the witness likely will continue to select that person in subsequent lineups even where the initial identification was incorrect. Dr. Eisen stated that studies have shown that there is no statistically significant relationship between confidence of an identification and its accuracy. However, Dr. Eisen also made clear that eyewitnesses can and do make accurate identifications and that not all identifications are mistaken or false.

Following a four-day trial, the jury found Campbell guilty of one count of first degree burglary.⁵ On August 27, 2008, the trial court sentenced Campbell to state prison for an aggregate term of 14 years. On September 11, 2008, Campbell filed a timely notice of appeal.

⁵ Co-defendant Williams also was charged with one count of first degree burglary. Prior to the start of trial, Williams entered a no contest plea to the charge.

DISCUSSION

On appeal, Campbell argues that the trial court violated his constitutional right to due process in admitting evidence of Carr's pretrial and trial identifications because the pretrial identification procedure was unduly suggestive and unreliable, and as such, it impermissibly tainted Carr's subsequent in-court identification. Campbell also asserts that if his due process claim was not preserved for appeal, his trial counsel rendered ineffective assistance in failing to renew his objection to the eyewitness identification evidence at trial. We conclude that the trial court did not deny Campbell due process in admitting the challenged evidence.

I. Relevant Proceedings

Prior to the commencement of trial, Campbell brought a motion in limine to suppress evidence of the pretrial photographic identification of him as well as any in-court identification to be made by the prosecution's witnesses at trial. In his motion, Campbell contended that admission of the eyewitness identification evidence would deny him due process because the pretrial photographic lineup was "unnecessarily suggestive and conducive to irreparable mistaken identification." He also claimed that any prospective in-court identification of him would "be tainted by the unconstitutional pretrial identification and rendered inadmissible at trial."

On June 6, 2008, the trial court heard the motion in limine. Defense counsel provided the court with the six-pack lineup that had been shown to Carr and argued that it was unduly suggestive. After examining the six-pack, the trial court explained that unless the photographic lineup was "egregiously . . . off," any issues with the lineup went to the weight, rather than the admissibility, of the evidence. The court noted that while Campbell's photograph was somewhat lighter than the others, another photograph in the six-pack had a similar look. In response to defense counsel's argument that Campbell was wearing jail clothing in his photograph, the court commented that it did not recognize Campbell's shirt as jail-issued and that it looked to the court like a "boat neck shirt." At the conclusion of the hearing, defense counsel told the court, "I have a tendency to agree with you on your impression. And if there is something that I find that

I think is just overwhelming, compelling, I will bring it in.” Defense counsel did not renew his objection to the eyewitness identification evidence during trial.

Following the jury verdict, Campbell made a motion for a new trial. In denying the new trial motion, the court noted as follows: “[F]or the record, having reviewed earlier a motion with respect to the identification and the six-pack, I did not find it to be an unduly suggestive six-pack at all. I did not recognize that the defendant had on a shirt from the jail until it was pointed out. I thought he blended in very well with the other five people on the six-pack. That was my personal feelings of what I saw.”

II. Preservation of the Claim for Appeal

Campbell asserts that to the extent this Court finds that defense counsel’s failure to renew the objection to the eyewitness identification evidence at trial forfeited his evidentiary claim on appeal, Campbell received ineffective assistance of counsel as a result of the failure to object. However, the Attorney General concedes, and we agree, that Campbell’s pretrial motion in limine adequately preserved the claim.

In order to preserve evidentiary issues for appeal, the objecting party must make a timely objection stating the specific ground on which it is made. (Evid. Code § 353, subd. (a); *People v. Brown* (2003) 31 Cal.4th 518, 547; *People v. Morris* (1991) 53 Cal.3d 152, 187, disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.) “A properly directed motion *in limine* may satisfy the requirements of Evidence Code section 353 and preserve objections for appeal. [Citation.]” (*People v. Ramos* (1997) 15 Cal.4th 1133, 1171.) To comply with Evidence Code section 353, a motion in limine must meet the following requirements: “(1) a specific legal ground for exclusion is advanced and subsequently raised on appeal; (2) the motion is directed to a particular, identifiable body of evidence; and (3) the motion is made at a time before or during trial when the trial judge can determine the evidentiary question in its appropriate context.” (*People v. Morris, supra*, at p. 190.) The moving party also “must secure an express ruling from the court.” (*People v. Ramos, supra*, at p. 1171.) Provided that these requirements are met, “a sufficiently definite and express ruling on a motion in limine may . . . serve to preserve a claim” for appeal. (*People v. Brown, supra*, at p. 547.)

Here, Campbell’s motion in limine to suppress the eyewitness identification evidence satisfied the requirements of Evidence Code section 353. In his motion, Campbell set forth a specific legal ground for excluding the evidence -- that the photographic lineup was unduly suggestive and would taint any in-court identification -- and he subsequently has raised this issue on appeal. Campbell’s motion also was directed at a particular identifiable body of evidence, the pretrial identification procedure. In addition, the motion was made at a time before trial when the trial court could determine the evidentiary issue in its appropriate context by examining the photographic lineup and evaluating whether it was unduly suggestive under the law. Finally, the trial court made a “sufficiently definite and express ruling”⁶ on the motion in limine when it rejected defense counsel’s arguments that the lighting and clothing in Campbell’s photograph rendered it unduly suggestive, and stated on the record that what it saw in the lineup was “not . . . really terribly . . . out of left field.” Campbell’s evidentiary claim accordingly has been preserved for appeal.⁷

III. Admission of the Eyewitness Identification Evidence

“In order to determine whether the admission of identification evidence violates a defendant’s right to due process of law, we consider (1) whether the identification procedure was unduly suggestive and unnecessary, and, if so, (2) whether the identification itself was nevertheless reliable under the totality of the circumstances, taking into account such factors as the opportunity of the witness to view the suspect at the time of the offense, the witness’s degree of attention at the time of the offense, the accuracy of his or her prior description of the suspect, the level of certainty demonstrated at the time of the identification, and the lapse of time between the offense and the identification. [Citations.]” (*People v. Cunningham* (2001) 25 Cal.4th 926, 989.) “If,

⁶ *People v. Brown, supra*, 31 Cal.4th at p. 547.

⁷ In light of our conclusion that Campbell has not forfeited his evidentiary claim, we need not address his argument that his trial counsel rendered ineffective assistance in failing to renew the objection to the eyewitness identification evidence at trial.

and only if, the answer to the first question is yes and the answer to the second is no, is the identification constitutionally unreliable.’ [Citation.]” (*People v. Ochoa* (1998) 19 Cal.4th 353, 412.) The burden of proof rests with defendant to demonstrate the existence of an unreliable identification procedure. (*People v. Avila* (2009) 46 Cal.4th 680, 700.)

A. Suggestiveness

“A due process violation occurs only if the identification procedure is ‘so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’ [Citation.]” (*People v. Cook* (2007) 40 Cal.4th 1334, 1355.) “[T]here is no requirement that a defendant in a lineup, either in person or by photo, be surrounded by others nearly identical in appearance. [Citation.] Nor is the validity of a photographic lineup considered unconstitutional simply where one suspect’s photograph is much more distinguishable from the others in the lineup. [Citations.]” (*People v. Brandon* (1995) 32 Cal.App.4th 1033, 1052.) “‘Because human beings do not look exactly alike, differences are inevitable. The question is whether anything caused defendant to “stand out” from the others in a way that would suggest the witness should select him.’ [Citation.]” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 943.) We independently review a trial court’s ruling that a pretrial identification procedure was not unduly suggestive. (*People v. Kennedy* (2005) 36 Cal.4th 595, 609.)

We have reviewed the pretrial photographic lineup in this case, and it cannot be said as a matter of law that the lineup was unduly suggestive. All of the photographs in the lineup depicted Black males who appear to be similar in age and share some physical characteristics. All of the photographs also were taken from the shoulder up against a blank, neutral background. Although there were some physical variations among the persons depicted, none of these differences distinguished Campbell in a way that would suggest a witness should select him. Campbell’s photograph simply did not stand out from the others in an impermissibly suggestive manner.

Campbell argues that his photograph did stand out from the others in the six-pack because (1) he was the only one wearing jail clothing; (2) he was one of only two with curly hair or a slight build; (3) his face was more brightly lit than four others; and (4) one

person did not resemble Carr's description of the suspect apart from his race. Campbell also asserts that such differences were heightened because Carr made a cross-racial identification, which he contends is less accurate than a same race identification. We disagree, however, that these alleged differences in the photographs rendered the pretrial identification procedure unduly suggestive.

First, as the trial court correctly noted, the fact that Campbell was the only one in jail clothing was not discernable from his photograph. As depicted in the six-pack, it appears that Campbell was wearing a boat-necked style shirt, but there is nothing about the shirt itself that would indicate it was jail-issued. Furthermore, even if Campbell's shirt could be identified as jail clothing, "a conclusion that the lineup was unduly suggestive would not necessarily follow." (*People v. Carter* (2005) 36 Cal.4th 1114, 1163; see also *People v. Johnson* (1992) 3 Cal.4th 1183, 1217 ["The fact that defendant was the only person depicted in jail clothing . . . was not unduly suggestive under the circumstances present here"].) In this case, there was no evidence that Carr was ever aware that Campbell was wearing jail clothing or that she considered his clothing in making her identification.

Second, the lineup was not unduly suggestive merely because, as Campbell claims, he was one of only two men with curly hair and one of only two men with a slight build. The question is not whether there were any differences in the physical traits of the persons depicted, but whether Campbell's photograph stood out from the others in a way that would suggest the witness should select him. As Campbell concedes, he was not the only one in the photographic lineup with these particular physical characteristics. Although it appears that there were some variations in the hair style and body type of the men shown, none caused Campbell to stand out in a suggestive manner.

Third, the fact that the lighting in Campbell's photograph was brighter than four others in the lineup does not indicate an unduly suggestive identification procedure. As our Supreme Court has recognized, a photographic lineup is not rendered impermissibly suggestive by "variations in photographic composition or processing," particularly where the witness is instructed to consider the persons depicted, rather than differences in the

photographs themselves. (*People v. Carter, supra*, 36 Cal.4th at p. 1163; see also *People v. Johnson, supra*, 3 Cal.4th at p. 1217 [“Nor did differences in background color and image size among the various photographs render the lineup impermissibly suggestive.”].) Here, Carr was admonished to consider the persons depicted in the six-pack and was advised that photographs do not always show the true complexion of the subject. The purported differences in the lighting of the photographs were thus “trivial distinctions” and “immaterial.” (*People v. Carter, supra*, at p. 1163.)

Fourth, the lineup was not the result of an unduly suggestive procedure even if, as Campbell contends, one of the persons depicted did not resemble Carr’s initial description of the suspect except for his race. Because physical variations are inevitable, a lineup need not depict persons who are identical in appearance to the suspect to satisfy due process. In this case, the five other persons included in the lineup each shared some physical characteristics with Campbell, although it is true that none of them resembled Campbell in every respect. Nevertheless, because Campbell’s photograph did not stand out from the others in a way that would prompt the witness to select him, the photographic lineup shown to Carr was not unduly suggestive.

Campbell also argues that the manner in which the police presented the lineup to Carr led to an unduly suggestive procedure. In particular, Campbell asserts that Detective Goodwin improperly suggested to Carr that the suspect’s photograph was included in the six-pack because he told her that the police had arrested two individuals and asked her “to look at some photographs and pick out the person [she] saw.” However, the record does not demonstrate that there was any direct or indirect attempt by the police to influence Carr in her identification. Apart from telling Carr that the police had two suspects in custody, Detective Goodwin did not provide her with any information about the investigation. As our Supreme Court has noted, “[a]nyone asked to view a lineup would naturally assume the police had a suspect. [Citation.]” (*People v. Carpenter* (1997) 15 Cal.4th 312, 368, superseded by statute on other grounds as stated in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106-1107.) In addition, prior to showing Carr six-pack, Detective Goodwin read aloud a pre-printed admonition, which

advised Carr that she “should neither conclude nor guess that the photographs contain a picture of the person who committed the crime” and that she did not “have to identify anyone.” Detective Goodwin then showed Carr the six-pack, and after viewing the photographs for a few seconds, Carr identified Campbell as the person that she saw by the getaway car. Contrary to Campbell’s claim, there was nothing in Detective Goodwin’s statements to Carr which suggested that she should select Campbell as the suspect. Therefore, based on our independent review of the trial court’s ruling, we conclude that the pretrial identification procedure was not unduly suggestive.

B. Reliability

Even assuming arguendo that the pretrial identification procedure was unduly suggestive, we are persuaded that Carr’s photographic identification of Campbell was nevertheless reliable under the totality of the circumstances. As discussed, the factors to be considered in determining reliability include the opportunity of the witness to view the suspect at the time of the crime, the witness’s degree of attention, the accuracy of his or her prior description of the suspect, the level of certainty demonstrated at the time of the identification, and the lapse of time between the crime and the identification. (*People v. Cunningham, supra*, 25 Cal.4th at p. 989; *People v. Ochoa, supra*, 19 Cal.4th at p. 412.) The totality of the circumstances must suggest a “‘substantial likelihood of irreparable misidentification’ . . . to warrant reversal of a conviction on this ground. [Citation.]” (*People v. Cunningham, supra*, 25 Cal.4th at p. 990.) Based on our review of the record, none of the relevant factors support a finding of unreliability.

First, Carr had ample opportunity to view the suspect at the time of the offense. From her second story window, Carr had an unobstructed view of the person standing by the getaway car and she observed him in broad daylight. Although she only saw the front of the suspect’s face for one to two seconds, she was able to observe the side of his face for two to four minutes. According to Carr, she “got a good look” at the suspect’s side view as he stood by the car, staring in the direction of the victim’s house.

Second, Carr’s degree of attention to the suspect was sufficiently detailed. Carr was an artist who sculpted dolls and she was accustomed to studying faces. In studying

the suspect's face, she noted the bridge of his nose was very thin and that he resembled a person of Ethiopian or Egyptian descent. Prior to watching the suspect walk around the car, Carr wrote down the license plate number and she was fairly accurate in doing so, only transposing the last two numbers. By the time her attention was diverted by a second suspect coming over the fence, Carr had observed the man standing by the car for several minutes. It is true, as Campbell asserts, that Carr's recollection of the encounter was not exact in every respect. However, Carr's inability to recall each minor detail of the event does not demonstrate that her overall attention to detail was unreliable.

Third, it appears that Carr provided the police with an accurate description of the suspect shortly after the burglary. In her initial interview with the police, Carr described the person by the car as a light-skinned Black man with curly hair, wearing a white shirt and khaki pants. Based on his photograph in the six-pack, Campbell's physical characteristics are generally consistent with Carr's description.

Fourth, Carr expressed confidence in her photographic identification of Campbell and did not equivocate during the lineup or at trial. As Campbell correctly notes, Carr did ask for a side view photograph of Campbell during the lineup and tried to imagine what Campbell's face would look like from that angle because no side view shots were available. However, despite not having a side view photograph to consider, Carr selected Campbell's photograph from the six-pack after only a few seconds and then looked at it again to "make sure" she was correct. When asked by defense counsel whether she was 75 percent sure of her photographic identification, Carr answered that she was "more than 75 percent sure." When asked to describe her specific level of confidence, Carr responded that she was "90 percent" sure that her identification of Campbell was correct.⁸

⁸ According to the defense investigator who interviewed Carr shortly before trial, Carr recounted that she had reviewed the six-pack for five to six minutes and was 75 to 80 percent sure of her photographic identification at the time she made it. However, Carr also told the investigator that she may have immediately pointed to Campbell's photograph when shown the six-pack and that she would have been 100 percent sure of her identification if she had seen a side view. Overall, Carr's recollection of the lineup in

Finally, there was a fairly short period of time between Carr's observation of the suspect and her identification of Campbell. The burglary occurred on January 8, 2008, and Carr was shown the photographic lineup only three days later on January 11, 2008. (*People v. Kennedy, supra*, 36 Cal.4th at p. 611 [evidence that "the length of time between the crime and the identification was only three weeks" supported a finding of reliability].) It is unlikely that Carr's recollection of the suspect's face would have significantly faded during this three-day period.

Based on the totality of the circumstances, Campbell has not met his burden of demonstrating an unreliable identification procedure. Moreover, because we conclude that Carr's photographic identification of Campbell was reliable and was not the result of an unduly suggestive lineup, the pretrial identification procedure did not impermissibly taint Carr's subsequent in-court identification. Accordingly, the trial court did not violate Campbell's constitutional rights admitting the eyewitness identification evidence.

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

her interview with the defense investigator does not reflect a lack of confidence in her identification.